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SUMMARY RECORD OF THE 1436th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 24 July 1995, at 10 a.m.

Chairman: Mr. AGUILAR URBINA

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GE.95-17706 (E)

The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Third periodic report of Sri Lanka (CCPR/C/70/Add.6; HRI/CORE/1/Add.48)

1. At the invitation of the Chairman, Mr. Goonetilleke, Mr. Perera, Ms. Wijewardena and Mr. Abdul Azeez (Sri Lanka) took places at the Committee table.

2. Mr. GOONETILLEKE (Sri Lanka) thanked the Committee for its understanding attitude concerning the delay in the submission of his country's third periodic report (CCPR/C/70/Add.6) and renewed his Government's commitment to continued dialogue and cooperation with all human rights bodies of the United Nations system as well as non-governmental organizations (NGOs) active in the field of human rights. He drew attention to the supplementary information contained in an unnumbered document distributed by his delegation.

3. The new Government of the People's Alliance Party had come to power following elections in 1994 on a platform that included commitments to a negotiated political settlement of the conflict in the Northern and Eastern Provinces; to the promotion and protection of human rights; and to constitutional reforms, including the devolution of authority to address concerns, notably the concerns of minority groups, at the provincial level. Speaking in the United Nations General Assembly at its forty-ninth session, the Minister for Foreign Affairs had identified a "global social contract" whose postulates were good governance, the maintenance of human rights, equity and justice, and the provision of opportunities to enhance the quality of life; he had pointed out that, in Sri Lanka, the contract involved political pluralism and decision-making that was transparent and as widely accepted as possible, all who took part in public life being accountable for their actions.

4. As would be seen from the supplementary information to which he had referred, much had already been done to introduce legislative, executive and administrative changes that would, among other things, enhance Sri Lanka's position as a party to the Covenant.

5. At the top of the Government's agenda was a negotiated political settlement of issues affecting the people of the North and the East; to that end, it had, soon after assuming office, begun talks with the Liberation Tigers of Tamil Eelam (LTTE), having first relaxed the embargo enforced for security reasons during the previous administration. The principal objectives of the Government were the alleviation of hardship suffered by the Tamil people in the North due to the conflict; the conclusion of a cessation of hostilities agreement with the LTTE; and a durable solution to the problems of the Tamils through the commencement of a political dialogue. Adhering to a consistent policy which recognized the responsibility and duty of the State to provide for the essential needs of the entire population, the Government had lifted many of the restrictions on the transport of certain items to the North and the East, substantially reduced the prohibition on fishing in certain waters and prepared a comprehensive rehabilitation and reconstruction package

valued at 39 billion rupees (approximately $780 million). Steps had been taken to facilitate the free movement of people and goods to and from the Jaffna Peninsula. The Cessation of Hostilities Agreement concluded with the LTTE on 8 January 1995 had been followed by the creation of "Peace Committees" headed by representatives of the Governments of Canada, the Netherlands and Norway.

6. Regrettably, the LTTE had failed to respond to the initiatives of the Government, raising new issues and making new demands. Notwithstanding the military implications of those claims, the Government had undertaken to consider them within three months and had made further concessions, for example permitting the free movement of armed LTTE cadres in the Eastern Province.

7. The LTTE's refusal to enter into serious political dialogue and accept foreign mediation had been followed by its unilateral resumption of hostilities on 19 April, resulting in hundreds of deaths, the interruption of the peace initiative, and opprobrium from the international community. For its part, the Government, recognizing in the resumption of hostilities the potential for transgression of human rights, had taken immediate steps to prevent retaliatory attacks and to deal firmly with certain incidents of violence occurring in the South. It nevertheless remained committed to the political settlement of the problems involving the North and the East and determined to do everything in its power to transform the firm desire of all the people for lasting peace into reality.

8. A Select Committee of Parliament had been set up to examine the question of constitutional reforms. One of its most significant and important tasks was to prepare a set of proposals on fundamental rights, with due reference to international instruments including the Covenant and the European Convention on Human Rights.

9. The principal features of the proposed reforms could be summarized under five main headings. First was the incorporation of new rights which did not find expression in the present Constitution: the right to life, liberty and security of person, to own property and to freedom from unlawful interference with one's privacy. Next came expansion of the scope of existing rights, with proposals covering a range of civil and political rights, notably those guaranteeing freedom from arbitrary arrest, detention and punishment: the overall aim was to transform established principles of criminal law and procedure into constitutional guarantees. Thirdly, existing constraints on the exercise of fundamental rights under the Constitution would be reviewed and formulated in precise terms, with due regard for the provisions of the Covenant. Also to be reviewed was the current distinction between citizens and non-citizens with respect to the enjoyment of certain fundamental rights: proposals related to freedom of movement and of speech and expression, including publication and the right to peaceful assembly, had been tabled. Lastly, provision was made for a new procedure for petitioning the Supreme Court in regard to the infringement of fundamental rights: a relative or friend would be able to make representations on behalf of a person unable or incapable of doing so; any person or body of persons would have access to the Court if the application was in the public interest, thereby opening the way to public-interest litigation.

10. The important legislative, executive and administrative measures adopted by the present Government were set out in detail in the supplementary information document distributed to members of the Committee. He singled out the progress made on draft legislation relating to the establishment of a National Human Rights Commission; the adoption by Parliament in November 1994 of the Convention against Torture Act; the adoption of legislation to provide for the registration of deaths and the issue of death certificates in respect of persons reported missing and believed to be dead so that mechanisms for compensation might be set in motion; executive and administrative measures for the active promotion and protection of human rights, notably through presidential directives addressed to the heads of the armed forces and the police as part of a wide range of activities within the framework of the Human Rights Task Force (HRTF); the establishment of regional commissions to inquire into matters relating to missing persons with a view to providing relief to their families; the enactment of legislation to render the office of the Ombudsman, created in 1981, more effective, expeditious and accessible; the appointment of a committee to inquire into matters relating to persons detained under the Prevention of Terrorism Act and the Emergency Regulations, which had already submitted important recommendations on the revocation of detention orders; and the appointment by the President of a one-man commission to inquire into the consequences of violence at the time of the parliamentary elections in August 1994 and recommend compensation for dependants of persons who had lost their lives on that occasion.

11. In conclusion, he stressed that the Government was determined to achieve national consensus on a package of constitutional reforms including proposals for devolution and addressing in particular the legitimate aspirations of minorities. It was a matter of satisfaction that the Select Committee of Parliament had reached agreement on the chapters relating to fundamental rights, language provisions, the directive principles of State policy, the public service and the Constitutional Council. The Government was expected to announce the details of the political package in the near future.

12. The CHAIRMAN invited the Sri Lankan delegation to respond to the questions in section I of the list of issues, which read:

"I. Constitutional and legal framework within which the Covenant is implemented; non-discrimination and equality of the sexes; state of emergency; right to take part in the conduct of public affairs; and rights of persons belonging to minorities (arts. 2, 4, 25 and 27)

(a) In the light of the discussion that took place during the consideration of the second periodic report, please clarify whether the proposed Seventeenth Amendment to the Constitution has been adopted and, if so, in which ways it has enhanced the enjoyment of the rights protected under the Covenant.

(b) Is any step envisaged to harmonize the contents of restrictions and derogations to the exercise of human rights as provided for under article 15 of the Constitution with corresponding provisions in the Covenant (see paras. 22 and 23 of the report)?

(c) What has been the impact of the imposition of successive states of emergency on the exercise of the rights guaranteed under articles 1, 4, 25 and 27 of the Covenant? Please clarify what safeguards and remedies have been available to individuals, and what status has been accorded to the rights enumerated in article 4, paragraph 2, of the Covenant (see para. 30 of the report).

(d) Please provide detailed information on the powers, functions and activities of the Advisory Committee mentioned in paragraph 29 of the report which has been established under the Emergency Regulations to receive individual complaints. Has the draft legislation for the establishment of a Human Rights Commission in Sri Lanka, mentioned in paragraph 60 of the core document, been adopted? Please clarify the relationship of these bodies with other State organs, including the courts.

(e) Please clarify which set of rules is applicable during states of emergency. Are there rules other than those set forth in the Emergency Regulations?

(f) Please provide further information on measures taken to implement article 27, paragraph 5, of the Constitution, which purports to promote cooperation and mutual confidence among all sections of the population, including minority groups.

(g) In the light of the discussion that took place during the consideration of the second periodic report, please clarify what measures have been taken to ensure equitable access to public services for persons belonging to minorities, particularly through the introduction of 'ethnic recruitment quotas'.

(h) What measures have been taken and what progress has been achieved in ensuring gender equality in Sri Lanka in promoting the participation of women at all levels of the political, economic and social life of the country, and in particular that of women who profess different religions existing in the country?

(i) What steps have been taken to disseminate information on the rights recognized in the Covenant? Has the public been informed of the Human Rights Committee's consideration of the report?"

13. Mr. PERERA (Sri Lanka), responding to the questions under paragraph (a), said that as a consequence of the interruption of all-party consultations on the subject, the Seventeenth Amendment to the Constitution had not been adopted. The issues addressed in that Amendment, such as freedom from arbitrary arrest, the right to life, the scope of restrictions on fundamental rights and the question of collective action to protect those rights were, however, considered to be covered by the proposed constitutional reforms being discussed in the Select Committee of Parliament which, he understood, had already reached agreement.

14. Concerning question (b), he confirmed that, as part of the constitutional reform process, the scope of restrictions and derogations to the exercise of human rights as provided for under article 15 of the Constitution was being narrowed with the aim of harmonization with the provisions of the Covenant. Details would be published shortly.

15. Regarding the questions in paragraph (c), he pointed out that the purpose of the Emergency Regulations was to deal with exceptional situations in the interest of public security, including the preservation of public order and the maintenance of essential supplies and services. The Regulations were of general application and singled out no particular group; no discrimination whatsoever was involved; nor did they affect in any way the rights guaranteed under articles 1, 4, 25 and 27 of the Covenant. At present, the Regulations were in force in the Northern and Eastern Provinces and certain adjacent areas, and in the city and suburbs of Colombo. Adequate safeguards and access to remedies existed through the advisory committees empowered to hear grievances, the reinvigorated Human Rights Task Force (HRTF) and the directives issued by the President to the heads of the security and police forces.

16. Turning to paragraph (d), he said that the Advisory Committee comprised a minimum of three persons appointed by the President and reporting to the Minister of Defence. A second advisory body, appointed by the latter in 1987 and headed by two retired judges of the Court of Appeal, made recommendations to the Minister concerning the release, rehabilitation or prosecution of suspected terrorists held in detention; it was extremely active and engaged in fact-finding and the processing of representations not only from arrested suspects but also from persons who had surrendered to the authorities and admitted their involvement in terrorist activities; it was empowered to act on its own initiative in launching inquiries on the basis of independent information received.

17. As already stated, draft legislation for the establishment of a Human Rights Commission would be set before Parliament shortly; broad consultations had been held and close attention had been paid to international standards in attempting to ensure the impartiality and independence of that body in both its membership and functions. As to its relationship with other State organs, including the courts, the Commission would inquire into any appeals-related matter referred to it by the Supreme Court, reporting back to the Court within an established time-limit. Where, in the course of an investigation by the Commission, the scope of a fundamental right was called in question, the Commission might refer the matter to the Supreme Court for determination, in accordance with article 125 of the Constitution. Legislation establishing the Human Rights Commission would also provide that all arrests and detentions under the Prevention of Terrorism Act and the Emergency Regulations must be reported to it; the Commission must be informed of, and have access to, places of detention.

18. Turning to question (e), he said that the Emergency Regulations currently applicable were set out in the Official Gazette of 4 November 1994. The Emergency Regulation establishing the Human Rights Task Force (HRTF) had been enacted on 7 June 1995 and the directives thereunder had been issued by the President to the heads of the armed forces and the police force

on 14 June 1995. The Emergency Regulations reflected a number of changes, including the establishment of the HRTF with corresponding reporting obligations. A Regulation relating to the burial or cremation of dead bodies had been removed, making it unnecessary to comply with the procedure relating to inquests; it had been replaced by Regulations 44 to 46, with safeguards such as post-mortem inquiry by a magistrate and inquiry by the High Court. The maximum period for holding persons who had surrendered had previously been 21 days; since 1993, under Regulation 22.2, it had been 7 days. The Regulations gave recognition to the Committee set up under the Ministry of Defence which performed various functions related to detainees, including their rehabilitation, and had the power to investigate on its own initiative. The offences of incitement and sedition had been removed from the Emergency Regulations in 1993, briefly reintroduced thereafter but removed again in 1994. The period of detention under Emergency Regulation 18 had been reduced from 90 days to 60 days in the North and East of the country and to 7 days elsewhere. Provisions on incommunicado detention gave access to next-of-kin and lawyers, and detainees were no longer held for long periods under the Emergency Regulations; after the initial investigation they were either released or produced in court and remanded in custody. The original Regulations had consisted of 72 provisions covering a range of offences. Many had since been deleted, and 57 provisions were currently in force.

19. Turning to question (f), he said that his Government gave the highest priority to the promotion of cooperation and mutual confidence among all sections of the population, including minority groups. The present Government had established the Ministry of Ethnic Affairs and National Integration as a step towards bringing about reconciliation of all people of every race, religion and political opinion in order to ensure that Sri Lanka was equally the land of all of its people. The Ministry functioned directly under the President. It was recognized that, in a multi-ethnic and multilingual society such as Sri Lanka, ignorance of the language of other ethnic groups could be a cause of contention and marginalization, and that every citizen should know all three of Sri Lanka's languages, including his or her mother tongue. The Education Department had taken measures to teach Sinhala and English in Tamil-medium schools and Tamil and English in Sinhala-medium schools. The "Peace through Language" programme of the Department of Official Languages assisted public servants in gaining proficiency in all three languages. The White Lotus Movement, launched by the President on 8 July 1995, sought to ensure communal harmony by putting across the message of peace and one Sri Lankan identity, and to defeat separatist politics; its message was to be carried to grass-roots level, and in particular to schoolchildren. At the district and provincial levels, there were citizens' committees and peace committees comprising representatives of all sections of the population, including minority groups; they were aimed at promoting peace and harmony among the various sections of the Sri Lankan community, and closely interacted with and were encouraged by the organs of Government in the common interest of the promotion of human rights and fundamental freedoms.

20. Turning to question (g), he said that article 12, paragraph 2, of the Sri Lankan Constitution provided for equitable access to public service. Circular 15 of 1990 of the Ministry of Public Administration guaranteed the application of ethnic quotas which were adhered to in recruitment to the public service. Recruitment at the national, provincial and district

levels was to be in line with the respective ethnic proportions at those levels. Overall, members of the Sinhala community were to fill 75 per cent of the total number of vacancies, Tamils 12.7 per cent, persons of Indian origin 5.5 per cent and Muslims 8 per cent, with a permissible variation of ± 2 per cent. A recent Supreme Court judgement in the case of Ramuppillai v. the Attorney-General had held that any application of ethnic quotas to promotions in the public service was not justified in the light of article 12 of the Constitution. The Supreme Court had also expressed strong reservations concerning the principle of ethnic quotas being used even for recruitment to the public service, although that had not the issue before the court. There had also been fundamental rights applications filed in the Supreme Court where persons from minority groups had alleged that despite being favourably placed in the order of merit they had not been appointed because of the application of ethnic quotas under Circular 15 of 1990, thereby challenging that application. The State had agreed to settle those cases without adjudication, concluding that the ethnic quota circular was inconsistent with article 12 of the Constitution. However, to address the anomaly, certain proposals had been made to the Select Committee of Parliament considering amendments to the Constitution to the effect that it should amend article 12 to permit benefits to be conferred upon certain groups and disadvantaged sections of the population by executive measures, thus permitting the adoption of ethnic quotas in employment.

21. As for question (h), he said that article 12, paragraphs 2 and 3, of the Constitution guaranteed that no citizen should be discriminated against or subject to any social disability on grounds of sex. Equality between the sexes was guaranteed in education, employment and political participation. Universal adult franchise had been introduced in 1931, and Sri Lanka had had the first female head of State in the world; the current President and Prime Minister, as well as a number of Cabinet Ministers and MPs were women. Sri Lanka had ratified the Convention on the Elimination of All Forms of Discrimination against Women in 1981, as well as ILO Conventions on equal remuneration and maternity benefits. Maternity leave had been extended to three months for both the private and public sectors in 1985 and 1988 respectively. Many statutes in Sri Lanka dealt with the situation of women in regard to family relations, employment and economic rights, and conferred equal status on men and women. The Married Women's Property Ordinance of 1923 gave non-Muslim women equal rights with men to separate property, and the right to enter into contracts or other transactions independently of their husbands or fathers. The Widows and Orphans Ordinance of 1983 conferred equal rights in matters of social security and the public sector.

22. The Women's Charter provided for the enhancement of national machinery for women by the establishment in 1993 of the National Committee on Women whose objectives and functions were to receive and scrutinize complaints of gender discrimination and channel them where appropriate, to refer complaints of violations of provisions contained in the Charter to the Government and NGOs for redress, legal aid and/or mediation, to monitor such action and require annual reports on progress from relevant administrative authorities and to make such results widely available within the country, to evaluate the impact of all legislative and development policies on the rights and responsibilities of women as contained in the Charter, to help to achieve the objectives of the Charter through the encouragement of relevant research,

and to make recommendations for reforms on the basis of that research. The National Committee on Women also advised the Minister responsible for the status of women on matters which were referred to it by the Minister or which the Committee considered relevant. The Ministry for Women's Affairs was the national focal point and apex of the national machinery for women, concerning itself with the formulation of national policies for their advancement. In 1993, Sri Lanka had hosted the eighth Asian regional seminar on traditional practices affecting the health of women, organized by the United Nations Centre for Human Rights. Many NGOs were active on gender issues and gender-sensitizing programmes.

23. In January 1995 the Cabinet of Ministers had approved recommendations proposing amendments to the law on rape and other sex offences following a thorough review of the laws in force. Cabinet approval was being sought for proposed amendments to the Penal Code which would incorporate new offences such as marital rape in respect of a judicially separated wife, sexual harassment, grave sexual abuse and protection of the identity of a victim. The definition of rape was to be amended, and likewise the definition of grievous hurt was to be modified to include more forms of hurt. The age of statutory rape was to be increased to 16 years, with a new provision reducing the age for illicit sexual intercourse with girls to 16 years, and reducing the legal age for prostitution in respect of women also to 16 years. Medical termination of pregnancy was to be approved in cases of pregnancy resulting from rape and incest, and termination was recommended in case of congenital abnormality of the foetus. The minimum age of marriage was to be raised to 18.

24. Turning finally to question (i), he said that the principle of the equality of all human beings in respect of their basic human rights had been emphasized in the study of various subjects in Sri Lanka's educational institutions. Human rights concepts had been introduced in schools in 1983, and the curriculum now included the study of discrimination in different parts of the world on the basis of race, religion, colour, gender and other factors, and the consequent denial of fundamental human rights. Following a review in 1993 of a decade of human rights teaching in schools, a decision had been taken to develop an in-service programme to cater to the needs of all educational officers dealing with human rights, to improve textbooks and prepare a detailed syllabus and course guides, to build school-based assessment tasks into the teaching process, to improve the teaching of human rights by using more teaching aids, and to give teaching programmes more publicity, especially through the electronic media. Human rights concepts had been taught in primary schools in Sri Lanka since 1985, and the programme was currently being expanded. A workshop held in December 1993 had identified the right to life, freedom of expression and respect for others and their views as human rights concepts suitable for teaching in primary schools. A comprehensive course in human rights law had been introduced as an optional subject for final-year students in the LL B course in the Faculty of Law of the University of Colombo in 1993, and human rights was a specialized field of study for the degree of LL M at the same university. In 1991, the University of Colombo had established a Centre for the Study of Human Rights within its Faculty of Law; its aim was to promote and facilitate the teaching of human rights and research in human rights, as well as to target members of the security forces for particular teaching programmes. International human

rights instruments had been published in all three of the country's languages, and human rights issues were given wide coverage in the Sri Lankan press, which had reported on the current consideration of Sri Lanka's third periodic report by the Human Rights Committee.

25. The CHAIRMAN invited members of the Committee who so wished to put additional questions in the light of the replies by the delegation of Sri Lanka to section I of the list of issues.

26. Mr. ANDO said the additional information contained in the supplement to the third periodic report was valuable, but it would have been more useful, especially for NGOs, if it had been issued earlier. He welcomed the initiative of the new Government and President to negotiate with the rebels, and regretted that the latter had so far refused to cooperate. He noted that the declaration of a state of emergency had been notified to the Secretary-General of the United Nations, as required under the Covenant. As for the Advisory Committee set up under the Ministry of Defence, he asked whether any consideration had been given in its composition to ethnic balance, and whether the fact that it came under the Ministry of Defence precluded subsequent judicial review of a complaint. He wondered if there was any jurisprudence of the Supreme Court regarding the constitutionality and compliance with international obligations of the Emergency Regulations and emergency legislation. Noting that the report contained information gathered by the Centre for Women's Research, he inquired about the percentage of women in the legal profession at all levels: judges, lawyers and academics. Paragraph 11 of the report referred to the large number of complaints of discrimination, and in that connection he requested more detail of specific cases and information regarding the core issues contained in those complaints. Paragraph 115 of the report referred to the transmittal of a father's citizenship to his newborn child; he wondered whether a mother's citizenship was similarly transmissible. As for family property rights, it had been stated that an old legal provision established equality for men and women with regard to non-Muslims, whereas Muslims were covered by family law; he inquired about the content of that family law and whether men and women were really equal in matters of family property. In the event of divorce, was responsibility for child care given to the father or to the mother, and if to the mother, was she given sufficient financial protection to enable her to bring up the child?

27. Ms. EVATT regretted that Sri Lanka was once again witnessing violent conflict, but commended the broad range of laws and institutions to deal with its consequences, and in general to promote human rights. With reference to the Select Committee of Parliament which was looking at restrictions on rights under the Constitution exceeding those under the Covenant, she asked whether it would also be examining other discrepancies between the Constitution and the Covenant, such as the fact that some rights under article 14 of the Constitution were limited to citizens and aliens who had been resident in Sri Lanka for 10 years. There were also differences in the grounds of discrimination as between the Constitution and the Covenant. It was her understanding that the Supreme Court could pronounce on the compatibility of projected legislation with the Constitution but not of past laws, and she therefore wondered how the Supreme Court dealt with executive actions that were based on existing laws. Were they outside its jurisdiction? Would the

constitutional review process extend to consideration of whether it should be possible to challenge existing laws on the basis of their compatibility with the Constitution?

28. She asked whether the National Human Rights Commission would be able to take certain allegations of violations of rights directly to the Supreme Court and what would be the relation between the Commission and the Human Rights Task Force (HRTF), to which arrests and detentions under emergency laws were to be reported. Would the Commission take over that function from the HRTF? Who were the members of the HRTF, what was the scope of its mandate, and how many arrests and detentions were made under the current emergency laws?

29. There seemed to be certain discrepancies between the Emergency Regulations and directives issued in respect of those Regulations. The Regulations required that the HRTF should be notified of all arrests and detentions within 48 hours, while the appropriate directive required officers to notify the HRTF within 4 days. The Regulations required that an arrest receipt should be given in every case, while the directives said that it need be given only upon request. Those seemed to be serious differences, and she wondered whether they were consistent with obligations under the Covenant. As for the Commission for the Elimination of Discrimination and Monitoring of Fundamental Rights Regulations, the material available referred to the number of settlements that had been reached, but she wondered if there was information about the level of implementation of those settlements. It had also been suggested that the National Human Rights Commission had itself complained that there were certain deficiencies in its own powers, for example a 180-day time-limit on raising matters before it and the fact that certain cases could not be brought before it because its remit was not sufficiently extensive. Were those issues, raised by the Commission itself, to be given consideration, and would reforms be made so as to expand its jurisdiction?

30. She supported what Mr. Ando had said regarding the status of women, but also wished to ask why the immigration regulations did not accord the same entry rights to non-citizen husbands of Sri Lankan women as they did to non-citizen wives of Sri Lankan men, and how that was compatible with equality. She wondered whether the raising of the age of marriage to 18 would apply to all Sri Lankan women or only to those belonging to certain groups, and she requested further details regarding the raising of both the age of consent and the age of marriage. Her understanding was that the Women's Charter had no legal standing, and she wondered whether consideration was being given to ensuring that its provisions had such standing and consequently gave rise to enforceable rights.

31. Mr. LALLAH said that the report was long on legal detail but short on practical data. The additional information submitted had, however, proved helpful.

32. Sri Lanka was engaged in a national conflict of grave proportions. Regrettably, tasks which were usually the responsibility of the civil police had devolved on the military. What sort of training had been provided to the latter to assist them in their relations with the population? What measures were taken to discourage soldiers from embracing the attitude that to be a

Tamil was to be a terrorist? The efforts of the new Government to promote peace were encouraging; the setback to that process, for which the LTTE was certainly responsible, was correspondingly regrettable.

33. Much had been said about projected legal and institutional reforms. To his mind the most important of those measures, because it addressed the root causes of the social malaise in Sri Lanka, was the establishment of the Ministry of Ethnic Affairs and National Integration, which would deal, inter alia, with language policy. The endeavours of the President herself to further national integration were also commendable. The history of Sri Lanka over the course of the previous 10 years in fact demonstrated that a concept of national integration had been lacking; inevitably, breaches of fundamental rights occurred.

34. The report stated that the Supreme Court was competent to review the conformity of draft legislation with certain fundamental human rights standards. What was essential, however, was that Sri Lanka should discharge its obligations under article 2, paragraph 3, of the Covenant. If no judicial body had the power to review the practical application of such legislation in relation to those international obligations, a serious loophole existed. Thought should perhaps be given to amending the Constitution in order to empower the Supreme Court accordingly.

35. Various commissions had been set up to address the problem of disappearances; one such was the Commission of Inquiry into Election Violence. He was aware of a number of notable Sri Lankan politicians who had lost their lives, among them Mr. Athulat Mudali and Mr. Premadasa. Were inquiries being conducted by that Commission to establish the causes of those violent deaths?

36. Reference had been made to a body called the Muslim Home Guards. Were they insurgents whose power had been legitimized? What was their status? To what extent were they under the control of the Government? Further information on these points would be useful.

37. It seemed that there were circumstances under which the National Human Rights Commission referred matters to the Supreme Court, and vice versa. What was the basis for that arrangement? Did the National Human Rights Commission deal with the factual aspects of a particular situation and the Supreme Court with the legal effects? The Sri Lankan delegation should provide clarification.

38. Furthermore, it seemed that consideration was being given to reforming the Constitution with reference to articles 9, 10 and 14 of the Covenant. That was a surprising development. Had Sri Lanka not always lived under the rule of law, at least before the onset of the civil conflict? He hoped that such constitutional reform simply meant that certain basic rights currently guaranteed by domestic legislation would be enshrined in the Constitution. Finally, the provisions of article 4 of the Covenant, which restricted derogations from certain articles of that instrument, should also be written into constitutional law.

39. Mr. KLEIN shared Mr. Lallah's assessment of the report and the additional information. Paragraphs 1 and 2 of the report addressed article 1 of the Covenant with excessive brevity. It was furthermore frankly incorrect to state that the right to self-determination did not apply to sovereign independent States. Since in fact only sovereign independent States were States parties, such a remark essentially rendered that eminent concept meaningless. In its general comment 12, the Committee had formulated useful recommendations concerning that right; under article 40, the Committee also requested States parties to provide detailed explanations with regard to each of the articles of the Covenant. The report failed utterly to fulfil that requirement.

40. Paragraph 2 of the report went on to state that international law recognized that the principle of self-determination could not be "construed as authorizing any action which would dismember or impair totally or in part the territorial integrity or political unity of sovereign and independent States". However, the right to self-determination imposed a permanent obligation upon States to have a Government which represented the whole people belonging to a given territory.

41. The supplement to the report named a number of bodies that had been created to address human rights problems in Sri Lanka, among them various commissions of inquiry, the Human Rights Task Force, the National Human Rights Commission and the Human Rights Advisory Group. The question arose whether the plethora of human rights bodies might not be detrimental to conducting a successful inquiry into violations. Was there a coordinating body to harmonize their activities and to follow up their conclusions?

42. Mrs. CHANET said that, while the report was short, the additional information had proved helpful. Like Mr. Klein, she had been struck by the number of bodies designed to address human rights issues; she had counted nine. All of them seemed endowed with a posteriori administrative powers; none were designed to be preventive, nor did they play a judicial role. What was the link between those administrative bodies and the national judiciary? Were not those bodies by their very nature precarious, in that they could be dissolved from one day to the next? It was, furthermore, surprising that certain provisions of the Covenant, notably the right to security of person, were relegated to the ambit of those bodies rather than being enshrined in legislation. Like Mr. Klein, she wished to know if there was a body to coordinate the work of the bodies concerned.

43. Another new body described in the additional information was the Select Committee of Parliament on the Constitution; among the various new rights to be incorporated into the Constitution, however, she saw no reference to those covered by articles 10, 11, 15, or 27 of the Covenant. It seemed clear that Sri Lanka's approach to human rights, whether constitutional, legislative or institutional, was fragmentary, with basic rights being left to bodies which were not properly governmental.

44. Various sources had also pointed out the existence of special paramilitary forces, created and paid for by the State, which had been charged with summary, arbitrary and extrajudicial executions. There again, there was

a tendency to entrust what should properly be State matters to bodies that were essentially non-governmental and that could easily evade the control of the State.

45. Ms. MEDINA QUIROGA said that, since the Covenant had not been incorporated into the domestic legislation of Sri Lanka, and since so few of the rights guaranteed by the Covenant were reflected in the Sri Lankan Constitution, that country should give serious consideration to ratifying the Optional Protocol. Article 16 of the Sri Lankan Constitution stated that "all existing written law and unwritten law shall be valid and operative notwithstanding any inconsistency in ... preceding provisions". That clause appeared to establish that laws which contravened the Constitution could not be challenged - an astonishing situation. Similarly, article 80 of the Constitution stated that no court or tribunal should "inquire into, pronounce upon or in any manner call in question, the validity of such Act on any ground whatsoever". Those provisions seemingly represented a conscious decision to the effect that laws could violate the Constitution in matters of human rights.

46. The multitude of human rights bodies was indeed troubling. Had a staff been envisaged for the National Human Rights Commission, which had been allotted many and various powers? It would be useful to know, with regard to the three commissions established to inquire into disappearances, why 1988 had been selected as a cut-off point; many disappearances were known to have occurred as from 1983. Furthermore, it would be useful to know what course of action was envisaged if the security forces were found to be the responsible parties. What was the mandated term of those commissions, which had an immense investigative task before them? Furthermore, it seemed that the members of the Human Rights Task Force had no tenure and that there were no criteria for membership. By what mechanism would the independence, impartiality and efficacy of that body be assured?

47. Was it in fact the case that Parliament had no power over the state of emergency because the ruling party could effectively make decisions governing actions taken by MPs? It did seem that the Supreme Court had determined that it itself could not inquire into the legality of the state of emergency. The many minor crimes which merited the death penalty under the emergency regime were particularly distressing. The state of emergency also included peculiar detention regulations; the courts, for example, had been divested of the right to grant bail without the agreement of the Attorney-General.

48. Finally, she subscribed to the various questions concerning women that had been raised by other members of the Committee. It would furthermore be helpful to know why women working in the free-trade zones had no labour rights; or, if such rights did exist, why they were not enforced. The Government of Sri Lanka should describe what measures, if any, it was taking to alleviate the terrible conditions of migrant workers, most of whom were women. Other than the property-related discrimination discussed earlier, to what forms of discrimination were Muslim women subject? Lastly, had the woman recently executed in Abu Dhabi benefited from any form of diplomatic protection? The Sri Lankan delegation should describe any measures taken by its Government on her behalf.

49. Mr. EL SHAFEI said that the third periodic report of Sri Lanka, due in September 1991, had not been received until July 1994. Could that long delay be justified by the crisis situation prevailing in that country? It should be noted that the Committee was empowered to request special reports on situations of that nature. It was his hope that the dialogue would illuminate the state of emergency in Sri Lanka. The report gave regrettably little information, although the additional information had partly compensated for that lack.

50. He shared Mr. Klein's concerns with regard to the report's treatment of article 1 of the Covenant. Similar concerns could be raised with regard to article 25, which guaranteed to all the right to vote and to hold public office. Did the people living in northern Sri Lanka in fact enjoy that right?

51. As the delegation was aware, the Committee had received several communications from NGOs. One such, from a group called Lawyers for Human Rights and Development, stated that, under the Emergency Regulations, several thousand people had been detained in preventive custody, and that all those detained under Emergency Regulations 18 and 21 and Section 9 of the Prevention of Terrorism Act for investigation purposes were indiscriminately brought under Emergency Regulation 17 (1) and detained without trial for very long periods, the vast majority being people who could not have posed a threat to public security. The Sri Lankan delegation should provide precise information on the number of persons currently in detention who had not been brought to trial. Furthermore, the delegation had asserted that committees and boards had been established to hear the complaints of detainees. However, the communication from Lawyers for Human Rights and Development went on to assert that detainees were seldom afforded an opportunity of making representations before advisory committees and that hundreds had not been informed of that right even after several months in detention.

52. Various members of the Committee had spoken of the imposition by the Supreme Court of restrictions on its own powers. In that regard, the communication further maintained that there existed no means of preventing the executive from abusing emergency powers for political motives, and that the executive in fact decreed laws bypassing Parliament on subjects having nothing to do with the state of emergency. It went on to indicate that the Supreme Court had imposed restrictions on its jurisdiction when it held "in a case" that the existence of a state of emergency was not a justiciable matter which it could be called upon to determine by an objective test. To what case did that communication refer? Why did the Supreme Court feel constrained to restrict its own jurisdiction with regard to the state of emergency?

53. Mr. PRADO VALLEJO said that, while the National Human Rights Commission seemed to have been proposed with good intentions, it lacked powers and procedures with which to execute its decisions. Furthermore, complaints had to be submitted to that body within 180 days after the violations occurred; that provision seemed restrictive both for individuals seeking remedies and for the Commission itself in the fulfilment of its mandated task.

54. The Women's Charter likewise lacked the means to be properly implemented; its effectiveness was therefore crippled from the outset.

55. He noted that serious abuses had been perpetrated under the states of emergency. Emergency powers had been used to detain people without a court order for security reasons and to keep them in detention without trial for up to five years. The Minister of Defence was empowered to order the detention of individuals and could also supervise and restrict people's activities. Emergency powers had been used for political ends, even for the postponement of general elections. MPs could not act independently because of a provision enabling the ruling party to order the suspension of legislators. Paramilitary forces existed and had committed excesses of various kinds.

56. Paragraph 23 of the report stated that restrictions could be placed on a number of rights guaranteed by the Covenant, for example the right to choose one's residence in Sri Lanka, the right to equality, freedom to practise a religion and freedom to engage in a lawful occupation. The reasons given included the interest of the national economy, protection of public order or morality and meeting the just requirements of a democratic State. He asked the delegation to clarify the circumstances under which such restrictions could be introduced.

57. Mr. BÁN said that he saw a very deep contradiction between the third periodic report and the supplementary information submitted by the Government. As the additional document and the oral presentation had not covered all articles of the Covenant, he asked whether the Government of Sri Lanka was in agreement with the part of the original report concerning the remaining articles.

58. While the reports he had received from NGOs acknowledged that substantial progress had been made in the human rights situation in Sri Lanka, they also contained a certain amount of criticism. Amnesty International and other organizations had sent their reports to the Government and he was interested in hearing the Government's assessment of their input.

59. He was in favour of setting up bodies to investigate past human rights violations and seek compensation for the victims but he wondered whether the accumulation of bodies apparently acting in parallel was a desirable development. He understood that the very broad human rights jurisdiction of the Supreme Court under article 126 of the Constitution was to be reinforced under the amended Constitution so that not only victims but also their relatives would be allowed access to court. Why was it necessary to disperse human rights responsibilities among so many administrative and governmental authorities when the existing court system could provide remedies for human rights violations? What arrangements were there to ensure that the interests and views of the population of the North and the East were taken into account by the various human rights bodies?

60. The delegation had listed a number of rights which could be derogated from under the emergency legislation. Was that list exhaustive? What was the situation, for example, with respect to the right of peaceful assembly and the right to freedom of association?

61. Lastly, he inquired about the significance of the word "socialist" in the title of the Democratic Socialist Republic of Sri Lanka.

62. Mr. BUERGENTHAL said that he appreciated the Government's recent initiatives in the area of human rights. They were particularly noteworthy in the context of an armed conflict. He also congratulated the Government on its peace initiatives.

63. On the subject of self-determination, he asked for clarification of the second sentence of paragraph 2 of the report, which seemed to be incompatible with the third sentence. If it meant that the right to self-determination did not necessarily include the right to secession, he might find it an acceptable proposition, but if it implied that the right to self-determination did not apply to sovereign and independent States, he would strongly disagree.

64. He asked whether the supplementary report had been publicized in Sri Lanka and made available to human rights NGOs for study and comment.

65. He inquired how many meetings of the Human Rights Advisory Group set up by the Ministry of Foreign Affairs had been held; whether any important recommendations had been made and, if so, whether any had been implemented or taken into account by the Government; whether the Advisory Group had been asked to comment on the supplementary report; and whether the Group was drawn into discussions on how the Government might respond to recommendations by NGOs.

66. Mr. KRETZMER said he was gratified that the delegation represented a Government that was committed to the promotion of human rights.

67. He was impressed by the number of NGOs working in the field of human rights in Sri Lanka. If they had not received the supplementary report, the Committee might lack some very useful information.

68. He asked why distinctions were made in articles 12, paragraph 2, and 14 of the Constitution between the rights of citizens and those of other persons.

69. He also requested detailed information on differences in the rights of persons, especially of women, working within and outside the free-trade zones.

70. In its annual report for 1993, the Sri Lankan Commission for the Elimination of Discrimination and Monitoring of Fundamental Rights Regulations had drawn attention to discrimination against Sri Lankan women married to non-nationals. What kind of discrimination was involved and what had the Government done to eliminate it?

71. One NGO had reported on discrimination in the enforcement of criminal law, especially for political motives. What mechanisms existed to ensure that the criminal process was untainted by discrimination?

72. He asked for information on the Sixth Amendment to the Constitution, which prohibited advocacy of a separate State. He understood that it applied even to a body using totally peaceful and democratic means. How could such a provision be reconciled with article 25 of the Covenant?

73. Mr. BHAGWATI said that he appreciated the bold initiatives of the President of Sri Lanka designed to end the ethnic conflict. He hoped that her efforts would meet with success despite the intransigent attitude of the LTTE. He also welcomed the planned package of constitutional reforms designed to promote and protect human rights.

74. He was disturbed by reports that thousands of Tamil youths continued to be arrested and that some of them were ill-treated in detention. In 1993 more than 15,000 young Tamils had been arrested in Colombo alone, solely on the grounds of ethnic origin. Although the new Emergency Regulations issued in June 1993 had made secret detention illegal, there were reliable reports that people continued to be held in undisclosed places, that torture persisted in places of detention throughout the country and that no action was taken against the perpetrators.

75. According to Amnesty International, 159 refugees had disappeared four years previously from the Eastern University refugee camp. The Human Rights Task Force had investigated four security officers but no action had been taken by the Government. Amnesty International had also reported deliberate killings of Muslim and Tamil villagers in Polonnaruwa. The findings of an inquiry instituted by the Government had been handed over to the Minister of Defence on 29 May 1992 but the report had not been made public and there was no evidence that action had been taken to punish those responsible.

76. There had been extrajudicial executions in May 1995, presumably in reprisal for the attacks on the security forces by the LTTE. Had any investigation been ordered?

77. The arming of civilian populations to deal with insurgency was a disturbing development. He feared that it might have the undesired effect of promoting more violence.

78. The Supreme Court had reportedly taken the view that the declaration of a state of emergency could not be challenged. He drew attention to a decision by the Indian Supreme Court to the effect that the declaration of a state of emergency could be challenged in the courts.

79. He agreed with Mr. Klein that effective action was undermined where there were too many overlapping human rights bodies. He would prefer to see one strong, independent authority with adequate powers to deal with human rights violations. When the Constitution was amended to set up a National Human Rights Commission, the Human Rights Task Force might perhaps be dismantled.

80. He inquired what steps were being taken by the Government to promote human rights education.

81. He also asked what kind of relations existed between the Government and NGOs. At least one NGO had informed him that the supplementary report had not been circulated to it. According to the presidential regulations promulgated on 22 December 1993, NGOs were required to register with the Government and their income and expenditure were monitored. Such monitoring would surely impede the free and independent exercise of their functions. Were those regulations still in force?

82. The Commission for the Elimination of Discrimination and Monitoring of Fundamental Rights Regulations had drawn attention to gender-based discrimination in the area of marriage between citizens and non-citizens. Whereas a fairly liberal policy existed with regard to the issue of visas to non-national spouses of Sri Lankan men, stringent conditions governed the issue of visas to non-national spouses of Sri Lankan women. That policy constituted a violation not only of articles 2, paragraph 1, and 26 of the Covenant but also of article 23, since it would prevent a couple from establishing its marital home in Sri Lanka.

83. The Special Presidential Commission of Inquiry Act had been rushed through Parliament in 1975 to deprive the then opposition leader and former Prime Minister, Mrs. Bandaranaike, of her civic rights and to expel her from Parliament. He understood that that Act was still being used by the current Government for dealing with matters ranging from the assassination of important personages to allegations of large-scale corruption. The body that could be set up under the Act was not simply a fact-finding commission. Criminal penalties could follow from its findings, from which there was no appeal. Where the commission found a person guilty of certain acts, it made a recommendation as to whether civic disability should be imposed. The recommendation then went to Parliament for a final decision. What was the position of the Government with regard to the Act?

84. Mr. POCAR said that the Sri Lankan delegation had referred to the introduction of ethnic recruitment quotas for public service. He understood that the legislation had been challenged before the Supreme Court and that the Government had in consequence decided to amend article 12 of the Constitution concerning equality. He wished to know whether the Supreme Court's judgement had been founded on the principle of the introduction of quotas or on the way in which the system was organized in law. He had some doubts about the revision of the principle of equality in the Constitution to deal with what was admittedly a sensitive issue. The introduction of quotas could be viewed as a kind of affirmative action to eliminate conditions that could discriminate against some sectors of the population. The Committee had taken the view that such action did not necessarily violate the principle of equality on condition that it was temporary and introduced in order to create conditions less conducive to discrimination in the future. He also referred to article 25 (c) of the Covenant, which provided for access, "on general terms of equality", to public service.

85. Mr. FRANCIS, referring to paragraph 10 of the report, said that, as a developing-country national, he was very sensitive to procedures for investigating human rights violations. It was surely a somewhat inverted procedure to refer violations first to the Supreme Court and subsequently to the Commission for the Elimination of Discrimination and Monitoring of Fundamental Rights Regulations. Where a criminal element was involved, he conceded that the criminal procedure should have priority, but where it was purely a compensatory matter, why not have the case first referred to the Commission and later on, if necessary, to the Supreme Court?

The meeting rose at 1 p.m.